IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5059 of 2004
with
SPECIAL CIVIL APPLICATION No 12980 of 2004
to
SPECIAL CIVIL APPLICATION No 13019 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

TOUR OPERATORS & TRAVEL AGENT ASSOCIATION OF GUJARAT
Versus
UNION OF INDIA

Appearance:
1. Special Civil Application No. 5059 of 2004
MR PARESH M DAVE for Petitioner No. 1
MS DHARMISHTA RAVAL for Respondent No. 1
MR JITENDRA MALKAN for Respondent No. 1
NOTICE SERVED BY DS for Respondent No. 1/A-9
2. Special Civil Application No. 12980 of 2004
MR PARESH M DAVE for Petitioner No. 1
MR JITENDRA MALKAN for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 15/10/2004

COMMON ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

#. All these matters are disposed of by this common order. Initially, only one petition i.e. Special Civil Application No.5059 of 2004 was filed by the Tour Operators and Travel Agents Association of Gujarat before this court under Article 226 of the Constitution of India praying that a writ of prohibition or any other appropriate writ, direction or order be issued to the respondents permanently prohibiting them and their servants and agents from taking any action against its members i.e. travel agents under the Finance Act, 1994 and they may be permanently prohibited from treating the the travel agents as tour operators as defined under Section 65(52) of the Finance Act, 1994. By way of interim relief, it was prayed that pending hearing and final disposal of the petition, the Central Excise authorities functioning under respondent nos. 2 to 9 be restrained from taking any action against its members travel agents under the Finance Act and the Service Tax Rules and they may be further restrained from treating them as tour operators as defined under Section 65(52) of the Finance Act, 1994.

#. When Special Civil Application No.5059 of 2004 was placed for the first time for admission before another Division Bench of this Court, following order was passed:

"Leave to add Central Board of Excise and Customs as respondent no. 1-A.

Heard Mr.Paresh Dave, learned counsel for the petitioner.

Mr.Dave submits that the view being taken by the respondents, on the basis of the clarification issued by Ministry of Finance in April 2000, which is also to be found in one such Trade Notice (Trade Notice No. 1/2000 dated 27.4.2000 issued by Pune I Commissionerate, at Annexure G to the petition) goes beyond the definition of "Tour Operators" as shown in section 65(52) of Finance Act, 1994 with effect from 1.4.2000 which

reads as under :

"Tour operator means any person engaged in the business of operating tours in a tourist vehicle covered by a permission granted under the Motor Vehicles Act, 1988 (59 of 1988) or the Rules made thereunder."

Mr.Dave submits that this definition does not include or cover the travel agents working as commission agents for booking hotel rooms or for booking a taxi. He submits that the person who actually provides taxi service is covered by service tax net but not the travel agents who merely render services as commission agents.

3. Notice returnable on 5.7.2004.

It is clarified that pendency of this petition does not preclude the petitioner from making a representation to the Union of India in the Ministry of Finance and to the Central Board of Excise and Customs on the subject matter of this petition.

If such a presentation is made within two weeks from today, it shall be decided by respondent Nos. 1 and 1-A within two months from the date of receipt of the same.

4. Ms.D.N.Raval,learned Senior Standing Counsel for Central Government waives service of notice on behalf of respondent no. 1.

D.S. is permitted on rest of the respondents.

#. Though a brief speaking order was passed by the Division Bench of this Court, while issuing notice, no interim orders were passed because of the statement made by Ms.D.N.Raval, learned Standing Counsel appearing for the respondent who had waived notice for respondent no.1 that during the pendency of the representation, no coercive action would be taken against the members of the association. The said statement has continued till today, in spite of the change in the guards. Mr.Dave said that even after change in guards, the respondents have restrained themselves from taking any coercive measures against the petitioner - association and its members. This could hardly be objected by Mr.Malkan, learned Standing Counsel for the respondent on facts of this case.

#. In pursuance of the order of notice dated 23.04.2004, a detailed representation dated 27.04.2004 was made to the Central Board of Excise and Customs, Ministry of Finance, Department of Revenue, New Delhi as stated at the bar by learned counsel Shri Dave for the petitioner association. Unfortunately, the said representation is yet not decided by the newly added respondent no. 1-A within two months from the date of the receipt as ordered by the Division Bench of this Court on 23.04.2004.

#. It may be stated that when this petition was placed before this court on 27.09.2004, learned counsel Shri Paresh Dave for the petitioner - association prayed for time for filing separate petitions for each member of the association and accordingly aforesaid petitions being Special Civil Application Nos. 12980 to 13019 of 2004 have been filed by the members of the association. While adjourning the matter on 07.10.2004, learned counsel Shri Malkan for the respondent, was asked to take necessary instructions in the matter as to whether the members of the petitioner - association were to be treated as covered under the definition of "tour operators" for the period between 01.04.2000 to August 2004 ? Thereafter, on 7th once again the matter was adjourned on the request of Shri Malkan.

#. Today, Mr.Malkan has stated that the detailed reply affidavit is already filed in main Special Civil Application No. 5059 of 2004, but it was brought to our notice by Mr.Dave for the petitioner - association that the said reply affidavit was filed way back in 24.06.2004 and thereafter on 27.09.2004, this court passed an order calling upon Mr.Malkan to take necessary instructions in the matter on the above issue. However, Mr.Malkan has no instructions in the matter so far on the aforesaid issue.

#. Having heard learned counsel for the parties and having perused the earlier orders passed by previous Division Bench of this court as well as this Bench, we are of the considered opinion that when the petitioner association has already made a detailed representation dated 27.04.2004 before respondent no. 1-A, then there is no need to keep all these matters alive. Though directed by the Division Bench of this Court on 23.04.2004, unfortunately, respondent no. 1-A has not decided the representation so far though the period of two months is over since long. The petitioners are already protected on the oral statement made at the bar by Ms.D.N.Raval, Standing Counsel and because of her statement, the respondents have not so far proceeded

against the petitioners.

#. Under the circumstances, all these petitions are disposed of at this stage with a direction to the respondent no.1-A to decide the representation dated 27.04.04 as early as possible preferably on or before 30.11.2004 if the same is not decided so far. Till the representation is decided, the oral statement made at the bar by the learned Standing Counsel Ms.D.N.Patel for the respondent - Union of India on 23.04.2004 shall remain in force.

(B.J.SHETHNA, J)

(SHARAD D DAVE, J)

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